

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

WESTLECTRIC CASTINGS, INC¹.

Employer

and

Case 21-UC-404

UNITED STEELWORKERS OF AMERICA,
AFL-CIO

Petitioner-Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) and (c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ In the UC petition filed by the Petitioner-Union, the "Employer" was listed as "Westlectric Castings, Inc. and Commerce Castings Services, Inc., acting as either as joint employers or as a single employer." For the reasons noted below, I find it unnecessary to find that the noted entities are either a single employer or joint employers. Rather, the Employer noted is the entity which is party to the relevant collective-bargaining agreement. The Employer, which was not represented by counsel, did not take a position on the issues presented herein and did not file a post-hearing brief.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner-Union (hereinafter called "Petitioner-Union" or "Union") filed the instant petition seeking to clarify an existing contractual collective-bargaining unit to include: all production and maintenance employees who work at the Commerce Casting Services, Inc. facility, located at 2035 Camfield Avenue, City of Commerce, California.

The Employer, which is engaged in the business of manufacturing steel castings², is a California corporation with a facility located at 2040 Camfield Avenue, Commerce, California. The record discloses that on November 6, 1995, the Employer and the Union entered into a collective-bargaining agreement covering a unit of some 56 employees described as: "all production and maintenance employees of the Company's plant located at 2040 Camfield Avenue, City of Commerce, California 90040, excluding all

² The "castings" produced are used in the oil drilling industry, in energy-related industries, including natural gas, oil and power plants. In addition, parts are manufactured which are used for trucks, utility trailers and in the canning segment of the food processing business.

office, clerical employees, laboratory technicians, quality assurance technicians, guards, and supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action." The contract, by its terms was effective until November 6, 1995, but has been renewed, on a year-to-year basis, so that the present contract is effective from November 6, 2001, to November 6, 2002.

The record reveals that approximately 13 years ago, in or about 1988, another entity known as "Commerce Castings, Inc." was created which employed from three to four employees who performed welding, grinding and other functions on castings at a facility located at 2035 Camfield Avenue, Commerce, California, across the street from the above-noted Westlectric Castings facility. Thereafter, approximately 3 years ago, in about 1998, more employees were hired to work at the Commerce Castings facility as a result of increased work orders at the Westlectric facility. Thus, about 3 years ago, the Employer began to perform "impeller work³". While the impellers were manufactured at the Employer's Westlectric facility, the work of finishing the impellers was performed at the Commerce Castings facility. As a result of the increased work load at Commerce Castings facility,

³ An "impeller" is a steel casting; it is the internal portion of the part cast. Thus, it could be a valve, or other internal portion of the manufactured part.

the work force at the Commerce Castings facility increased from the three to four noted above, to some eight⁴.

Based on the above-noted facts, the Petitioner-Union submits that the Unit Clarification Petition should be granted, and that the employees working at the Commerce Castings facility should be accreted into the Westlectric Castings, Inc. unit as is described in the collective-bargaining agreement between the Union and the Employer.

The Board's express authority under Section 9(c)(1) of the Act to issue certifications includes the implied authority to police such certifications and to clarify them as a means of effectuating the policies of the Act. Thus, Section 102.60(b) of the Board's Rules and Regulations, Series 8, provides that a party may file a petition for clarification of a bargaining unit where there is a certified or currently recognized bargaining representative and no question concerning representation exists.

The Board described the purpose of unit clarification proceedings in Union Electric Co., 217 NLRB 666, 667 (1975):

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category-excluded or included-that they occupied in

⁴ The record discloses that there are presently three welders, four grinders and one machinist employed at the Commerce Castings, Inc. facility.

the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent. (Emphasis added).

As stated in Robert Wood Johnson University Hospital, 328 NLRB 912, 914 (1999), quoting United Parcel Service, 303 NLRB 326, 327 (1991), enfd. Teamsters National UPS Negotiating Committee v. NLRB, 17 F. 3d 1518 (D.C. Cir. 1994):

The limitations on accretion discussed above and applied in *Laconia Shoe* require neither that the union have acquiesced in the historical exclusion of a group of employees from an existing unit, nor that the excluded group have some common job-related characteristic distinct from unit employees. ***It is the fact of historical exclusion that is determinative.*** (Italics in original; Emphasis added).

A petition seeking to include a classification that historically has been excluded raises a question of representation, which can only be resolved through an election, or based on majority status. Boston Cutting Die Co., 258 NLRB 771 (1981). Similarly, when the employees have not been included in the unit for some time and the union has made no attempt to include the position in the unit, the Board may find that the position is historically outside the unit, and that the union has waived its right to a unit clarification proceeding. Sunar Hauserman, 273 NLRB 1176 (1984); Plough, Inc., 203 NLRB 818 (1973). Accord: ATS Acquisition Corp., 321 NLRB 712 (1996).

Applying these principles to the circumstances of this case, I find that the Commerce Castings Services, Inc. positions at issue do not fall within any newly established classifications of disputed unit placement or within existing classifications which have undergone recent, substantial changes in duties and responsibilities. Rather, the record demonstrates that the positions utilized at the Commerce Castings Service facility have been excluded from the existing contractual bargaining unit represented by the Union since at least 1995, when the present contract was executed, and that there have been no recent, substantial changes regarding the positions that warrant clarification.

The record reveals that the Union and the Employer never intended the employees performing work at the Commerce Castings Service, Inc. facility to be covered by the contract or otherwise represented by the Union. The record shows that the employee positions at the Commerce Castings Service, Inc. facility have been in existence since around 1988, and that in about 1998, the work force was increased from about four to eight. The collective-bargaining agreement between the Union and the Employer has been negotiated and renewed on a year-to-year basis, and the negotiated contract has not ever included the Commerce Castings Service, Inc. employees, and it does not otherwise purport to cover said employees. As is noted above, the contractual bargaining unit specifically defines the workers based on the

address of the facility where they perform work, and limits the unit to those employees performing work at the 2040 Camfield Avenue, Commerce, California, address. Additionally, the record does not show that the Commerce Castings Service facility employees, who perform work at the facility located at 2035 Camfield Avenue, Commerce California, have ever been subjected to the terms and conditions of the contract by either the Employer or the Union, including the requirement that they join and maintain membership in the Union in order to retain their positions.

Thus, the record establishes that since the creation of Commerce Castings Service, Inc. in July 1988, the employees performing work at the Commerce Castings Service facility have been consciously excluded by the Union and the Employer from coverage under the contract. As a result of their historical exclusion from the unit of employees employed at the Westlectric Castings, Inc., facility, the employees who perform work at the Commerce Castings Service facility cannot be accreted to the existing unit via a unit clarification petition⁵.

⁵ The Petitioner-Union does not address the issue of historical exclusion. Rather, it submits that the Employer and Westlectric Castings, Inc., are a single employer, or joint employers, and that because of the degree of interchange, the geographical proximity, the integration of operations, machinery and product lines, the centralized administration, the similarity of working conditions, the common control over labor relations and the relative number of employees, the Westlectric employees should be accreted into the contractual bargaining unit. None of the Petitioner-Union's contentions, even if assumed to be true, negate the conclusion noted above, that the Union and the Employer have historically not included the Westlectric employees in the unit covered by their collective-bargaining agreement. Accordingly, it is

Accordingly, the petition is dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed in Case 21-UC-404 be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on February 1, 2002.

DATED at Los Angeles, California, this 18th day of January 2002.

/s/ Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

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unnecessary to determine whether in fact Westlectric Castings, Inc. and Commerce Castings Services, Inc., in fact constitute a single employer or joint employers.